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7590

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EXAMINER

WILLATT, STEPHANIE L

ART UNIT

PAPER NUMBER

3732

6

DATE MAILED: 03/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/072,528

Applicant(s)

POLESUK, ERIC

Examiner

Stephanie L. Willatt

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of claims 9-10 in Paper No. 5 is acknowledged.
2. Claims 1-8 have been canceled.

### ***Claim Objections***

3. Claims 9 and 10 are objected to because of the following informalities:
  - In lines 1 and 10 of claim 9, "persons" should be changed to --person's--.
  - In line 6 of claim 9, --sheet-- should be inserted between "foil" and "overlapping".
  - In line 7 of claim 9, --sheet-- should be inserted between "foil" and "to be".
  - In line 10 of claim 9, --sheet-- should be inserted between "foil" and "to a".
  - In line 1 of claim 10, --first-- or --next-- should appear before "hair foil".Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee in view of Awaijane.

In Figures 1-4, Lee discloses a pop-up dispenser (10) for dispensing sheets of aluminum foil, as described in column 1, lines 44-48. Each sheet has a lead portion and a trailing portion. The lead portion of the first sheet (30) of aluminum foil extends through a dispensing orifice (elongated opening 14) to an elevation above that of the dispensing unit (10), as shown in Figure 3. The trailing portion of the first foil (30) overlaps the lead portion of the next hair foil to be dispensed, as discussed in column 1, lines 10-19 and column 2, lines 48-51. Withdrawing the first sheet of foil (30) pulls the next sheet, as discussed in column 1, lines 19-23. The withdrawing of the first sheet of foil (30) can be achieved with one hand. The first foil sheet (30) can be applied to a person's hair immediately after being dispensed without any further preparation if the foil sheet is already the proper size for applying to hair. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the foil sheets dispensed by the dispenser of Lee the proper size for applying to hair, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ (CCPA 1955).

Lee does not disclose the application of foil to a person's hair. Awaijane discloses the application of foil to a person's hair in column 6, lines 35-59. It would have been obvious to one having ordinary skill in the art at the time the invention was

made to apply the foil of Lee to a person's hair, as taught by Awaijane, in order to highlight only selected strands of hair.

### ***Conclusion***


6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gallo and Baxter disclose hair foils and hair foil dispensing methods. The webpage with the address of <http://www.mcexport.com/division/grocery/reynolds.html> discloses pre-cut pop-up foil sheets (see page 3). This website has a posting date of 3 September 2001, as can be seen on the printout of the results from a "Wayback Machine" search, which is attached to the printout of the webpage. The webpage with the address of <http://www.spilo.com/Products/itemDetails.asp?p-1&id=AL0146> discloses pre-cut pop-up hair foils. The website has a posting date of 16 March 2003, as can be seen on the printout of the results from a "Wayback Machine" search, which is attached to the printout of the webpage. The webpage with the address of <http://www.salonfoil.com/salonfoil.phtml> discloses pre-cut pop-up hair foils. The website has a posting date of 7 December 2001, as can be seen on the printout of the results from a "Wayback Machine" search, which is attached to the printout of the webpage.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie L. Willatt whose telephone number is 703-305-6316. The examiner can normally be reached on M-F (8:30-6:00) First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on 703-308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
slw

  
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